THE RELATION TO EACH OTHER OF DIFFERENT ADMINISTRATORS OF THE SAME DECEASED.

A dies intestate and domiciled in New York. B is appointed administrator of A's estate in New York, C in Montana and D in Massachusetts. C, the Montana administrator, sues X in Montana to recover a debt due, as alleged, to A in A's lifetime. X obtains judgment upon the merits dismissing the action. X then moves to Massachusetts and is there sued by D, the Massachusetts administrator, to recover the same alleged debt. He pleads as a defence the Montana judgment. Is the defence good?

Judge Putnam in the United States Circuit Court, District of Massachusetts, answers this question, as it would seem, in the negative.[1] His reason is that there is no privity between the two administrators. He says:[2]

"The law is settled beyond question that an ancillary administrator in one jurisdiction is not in privity with an ancillary administrator in another jurisdiction; so that no judgment by or against Harris as ancillary administrator in Montana could avail for or against an ancillary administrator appointed by the courts of Massachusetts bringing a suit in that state or in this district, although the cause of action was identically the same. This rule is so thoroughly established that we need not dwell upon it, only to say that it has been fully recognized and enforced by the Supreme Court in Aspden *v.* Nixon, 4 How. 467, 497; Stacy *v.* Thrasher, 6 How. 44, 58 and sequence; Johnson *v.* Powers, 139 U. S. 156, 159; Carpenter *v.* Strange, 141 U. S. 87, 104."

It is the purpose of the writer in this paper to analyze the cases cited by the court, to discuss the question of privity in this connection, and to find, if possible, the true solution of the question and the grounds upon which it may rest.

The facts in Aspden *v.* Nixon[3] were these. Matthias Aspden died in 1824, testate and domiciled in England. He left property in England and Pennsylvania which, with some exceptions, he gave to his heir at law. The will was probated in England and Pennsylvania, and letters testa-

[1] Ingersoll, Admx. *v.* Coram et al. (1903) 127 Fed. 418.
[2] Id. 432–433. [3] (1846) 4 How. 467.

mentary issued in both jurisdictions to Henry Nixon of Philadelphia.

In 1825 John Aspden, of London, claiming to be the heir at law of Matthias Aspden, filed his bill in Chancery in England against Nixon, as executor, for an account and distribution of the estate. Answer and replication were filed. John Aspden, of London, died in 1828 intestate and domiciled in England. Thomas Poole and Janet Jones, administrator and administratrix in England of the estate of John Aspden, of London, revived the suit, and in 1830 the bill was dismissed at the hearing. Thomas Poole and Janet Jones, as administrator and administratrix in England of John Aspden, of London, then filed a bill in the Court of Exchequer against Nixon, as executor, for the same subject matter. The decree in Chancery was pleaded in bar, the plea sustained and the bill dismissed.

In 1828 Samuel Packer filed his bill against Nixon, as executor, in the United States Circuit Court, Eastern District of Pennsylvania, claiming to be the devisee and praying the estate might be distributed to him. In 1835 the bill was amended and John A. Brown, the administrator of John Aspden of London in Pennsylvania and Janet Jones and Mary Poole, the daughters of John Aspden, of London, intervened and claimed the estate of Matthias Aspden on the ground that John Aspden, of London, was the heir. Nixon pleaded the proceedings in the English courts as a bar to any further proceedings on the part of the personal representatives of John Aspden, of London. A replication to the plea was filed and evidence taken. The judges divided in opinion and certified to the United States Supreme Court the question: "Is the evidence, touching the plea in bar, sufficient to support it?" At the argument in the United States Supreme Court, counsel were directed to go further and to argue the validity of the plea itself.

Justice Catron wrote the opinion. After stating the question submitted for decision to be whether the decree of dismissal in the English Chancery Court precluded Brown, the Pennsylvania administrator of John Aspden, of London, from prosecuting his claim as administrator for the Pennsylvania assets of Matthias Aspden and combating the contention that because the Pennsylvania administration of

Matthias Aspden's estate was ancillary and the English suit had gone for the Pennsylvania as well as the English assets, therefore, the English decree was res adjudicata of the right to the Pennsylvania as well as to the English assets, he deals with the claim that because the English decree rested upon the finding that John Aspden, of London, was not the heir and consequent devisee of Matthias Aspden, therefore, the question of his heirship to Matthias Aspden could not be relitigated in the Pennsylvania suit and says: "The question for us to dispose of is, whether the administrator and distributees of John Aspden, of London, shall be heard in the Circuit Court, or whether their evidence of title is barred? We have already stated that the Pennsylvania assets stand unaffected, and will only add, that the assumption that a complainant or plaintiff is estopped by a judgment against him, from introducing evidence in a second suit, and in another country, for other property, on the ground that the fact of title had been adjudged and concluded by a former judgment or decree (thus separating the title from the property), is an abstract proposition, inconsistent with the due administration of justice, and not recognized in our system of jurisprudence, or that of Great Britain, and is aside from any question affecting the comity of nations.

"Giving the British decree all the force and effect that could be accorded to it if it had been made in a State of this Union, it yet establishes no fact, as respects any title to the Pennsylvania assets; nor would the rules of evidence be sufficient in separate suits, pending in the same court, for different parcels of property, even between the same parties. And therefore we certify to the Circuit Court, that the evidence introduced 'touching the plea in bar' is no estoppel to the representatives of John Aspden, of London, in so far as they seek to recover the assets of Matthias Aspden's estate in the course of administration by the Orphans' Court of Philadelphia County. Further than this, we do not pretend to determine on the effect of the evidence, as we are not aware that any controversy now exists in the Circuit Court in regard to any other assets."

The decision, it will be seen, might well have been rested upon the single fact that the Pennsylvania and

English assets were different. The fact that the legal representative in Pennsylvania and the legal representatives in England were not the same natural persons was immaterial. Had the English administrator and administratrix of John Aspden, of London, taken out letters of administration in Pennsylvania and there sued to recover the Pennsylvania assets, the English Chancery decree would not have been a defense to the suit. If, however, after the English suits Nixon had removed the English assets to Pennsylvania and the suit in Pennsylvania to recover the assets so removed had been brought by an administrator in Pennsylvania wholly different from the English administrator and administratrix, it is altogether probable that the English Chancery decree would have been a good defence to such suit.

Justice Catron seems to have had this distinction in mind when he wrote: "And therefore we certify to the Circuit Court, that the evidence introduced 'touching the plea in bar' is no estoppel to the representatives of John Aspden, of London, in so far as they seek to recover the assets of Matthias Aspden's estate in the course of administration by the Orphans' Court of Philadelphia County. Further than this, we do not pretend to determine on the effect of the evidence, as we are not aware that any controversy now exists in the Circuit Court in regard to any other assets."

In Stacy *v.* Thrasher[1] a judgment had been obtained in a Mississippi Court against Ann Lee, the domiciliary administratrix in Mississippi of Charles H. Lee. The owner of this judgment then brought suit thereon against David S. Stacy, the ancillary administrator of Lee in Louisiana, in the United States Circuit Court, Eastern District of Louisiana. A judgment for the plaintiff in the Circuit Court was reversed in the United States Supreme Court, that Court holding that the Mississippi judgment was no evidence in Louisiana of a debt and that the creditor's remedy in Louisiana was by suit upon the original debt.

The reasoning of Justice Grier, who rendered the opinion of the Court, may be stated thus. The administratrix in Mississippi, by virtue of her appointment in Mississippi, acquired title to assets of the deceased, but to such assets

[1](1848) 6 How. 44.

only as were in the jurisdiction of her appointment. As to those assets and as to those assets only she came into privity of estate with the deceased. So the administrator in Louisiana, by virtue of his appointment in Louisiana, acquired title to assets of the deceased, but to such assets only as were in the jurisdiction of his appointment. As to those assets and as to those assets only he also came into privity of estate with the deceased. While they each came into privity of estate with the same deceased as to the assets in their respective jurisdictions, neither came into privity of estate with the other. Nor was there between them that kind of privity which may be called "official privity" which exists between successive administrators of the same deceased in the same jurisdiction, in consequence of which a judgment against an administrator in chief binds his successor, the administrator *de bonis non.* Of a judgment against an administrator, Justice Grier said: "The judgment is against the person of the administrator, that he shall pay the debt of the intestate out of the funds committed to his care. If there be another administrator in another State, liable to pay the same debt he may be subjected to a like judgment upon the same demand, but the assets in his hands cannot be affected by a judgment to which he is personally a stranger."

In these words is found, in our judgment, the key to the whole class of cases typified by Stacy *v.* Thrasher. A judgment against an administrator while in form *in personam* is in fact *in rem.* It binds the assets in the hands of the particular administrator sued. It does not bind other assets in the hands of other administrators in other jurisdictions.

In Johnson *v.* Powers [1] these facts were shown. One Stewart owned real estate in New York and made conveyances of parts to various persons. He then died domiciled in Michigan. The plaintiff presented a claim against the estate and the same was allowed by Commissioners appointed by the Michigan Probate Court to pass upon claims presented against the estate. The allowance was in effect a judgment. The plaintiff then brought suit upon said judgment in the United States Circuit Court, Northern District of New York, to set aside said conveyances as made

[1] (1890) 139 U. S. 156.

in fraud of creditors. The bill was dismissed and the decree of dismissal affirmed by the United States Supreme Court, because the Michigan judgment was no evidence in New York that the plaintiff was a creditor of the deceased. The Court held that a judgment against personal assets of the deceased in Michigan did not bind real assets of the deceased in New York.

If, however, the judgment had been one against an administrator in New York, and, therefore, against personal assets of the deceased in New York, the result would have been the same. A judgment against an administrator binds personal, but not real, assets even though both kinds of assets be in the same jurisdiction.

In Carpenter *v.* Strange[1] it appeared that a man named Miller had died in 1873, testate and domiciled in New York. His will was probated in New York and Tennessee and letters testamentary issued in both jurisdictions to a daughter, Mrs. Strange. Another daughter, Mrs. Carpenter, sued Mrs. Strange, as executrix, in a New York State Court to recover trust moneys received by the deceased and not accounted for by him. She obtained a judgment and then brought suit on the judgment in a State Court in Tennessee against Mrs. Strange, as executrix in that State. A judgment of the Tennessee Court was reversed by the United States Supreme Court because the Tennessee Court had failed to give to the New York judgment the full faith and credit required by the Constitution of the United States and the Act of Congress.

Had Miller died intestate and Mrs. Strange been appointed administratrix both in New York and Tennessee a judgment against her as administratrix in New York could not have been sued on in Tennessee. The reason for the decision lies in the fact that an executrix acquires title to the property of the testator from him by means of his will and not by virtue of the issue of letters testamentary. She acquires title to the property as a unit and a judgment against her in one jurisdiction is a judgment not against the assets in that jurisdiction alone but against all assets of which she has the administration in any jurisdiction. "That judgment," said Chief Justice Fuller, "was a judg-

[1] (1891) 141 U. S. 87.

ment *de bonis testatoris*, and it became Mrs. Strange's duty, as executrix, to apply the property of the testator wherever situate, to the payment of the judgment."[1]

The Court in the Ingersoll case argues that because there is no privity between D and C, the administrators of A in Massachusetts and Montana respectively, therefore, no judgment by or against C, as administrator in Montana, can avail for or against D, as administrator in Massachusetts, although the causes of action in the Massachusetts and Montana suits are "identically the same."[2] The cases analyzed above are then cited as supporting this proposition.

Suppose C, the Montana administrator of A, had obtained judgment against X, that X had then removed to Massachusetts and been sued there by D, the Massachusetts administrator, to recover the same debt for which C had recovered judgment in Montana, and had pleaded as a defence the judgment obtained against him by the Montana administrator. The decisions are all to the effect that the defence would be good.[3]

Do not these cases show that a judgment against C, the Montana administrator, "could avail" against D, the Massachusetts administrator?

The cases cited as supporting the proposition stated above have, we think, been misunderstood. In Aspden *v.* Nixon[4] the suit in Pennsylvania was to recover the assets left by Matthias Aspden in Pennsylvania; the suits in England were to recover wholly different assets left by him in England. The cause of action to recover the Pennsylvania assets and the cause of action to recover the English assets were not the same. The fact that the claim to the assets in Pennsylvania was based upon the same fact as the claim to the assets in England, namely, the alleged heirship of John Aspden, of London, to Matthias Aspden, did not make the cause of action in Pennsylvania "identically the same" with the cause of action in England. So in Stacy *v.*

[1] (1891) 141 U. S. 87, 103. [2] (1903) 127 Fed. 418, 432.

[3] Biddle *v.* Wilkins (1828) 1 Pet. 686; Lewis *v.* Adams (1886) 70 Cal. 403; Barton *v.* Higgins (1874) 41 Md. 539; Talmage *v.* Chapel (1819) 16 Mass. 71; Rucks *v.* Taylor (1873) 49 Miss. 552; Hall et al. *v.* Harrison (1855) 21 Mo. 227; Tittman, Admr. *v.* Thornton et al. (1891) 107 Mo. 500.

[4] (1846) 4 How. 467.

Thrasher[1] the causes of action in the Louisiana and the Mississippi suits were not the same. The Louisiana suit was brought upon a Mississippi judgment; the Mississippi suit was brought upon the original debt. But even if the Louisiana suit, like the Mississippi suit, had been brought upon the original debt, the causes of action would not have been the same. The Louisiana suit was brought to establish a claim against assets in Louisiana; the Mississippi suit was brought to establish a claim against wholly different assets in Mississippi. That the claim to the assets in Louisiana was based upon the same debt upon which the claim to the assets in Mississippi was based did not make the causes of action in the two suits "identically the same." The comments upon Stacy *v.* Thrasher are equally applicable to Johnson *v.* Powers.[2] In Carpenter *v.* Strange[3] there was a privity between Mrs. Strange, as executrix in Tennessee, and Mrs. Strange, as executrix in New York, and for that reason the case lends no support to the proposition which it is cited to support.

But it is said there is no privity between the Massachusetts and Montana administrators. If by "privity" is meant "privity of estate" the statement is doubtless true. Privity of estate is impossible between different administrators of the same deceased whether in different jurisdictions or in the same jurisdiction.

When a person dies intestate leaving assets in different jurisdictions, if such assets are to be administered, a separate administrator must be appointed in each jurisdiction. A separate person, or the same person, may be appointed in each jurisdiction; but the administration in any one jurisdiction must be separate from that of every other, whether the administrators be the same person or different persons. The administrator in one jurisdiction upon appointment and qualification acquires title to all assets of the deceased then or thereafter rightly therein. He is said to derive his title thereto from the deceased and as to them to be in privity of estate with the deceased. As to them he represents the deceased and is called his legal representative. If an administrator of the same deceased is appointed and qualifies in another jurisdiction he, too, will acquire title

[1] (1848) 6 How. 44. [2] (1891) 139 U. S. 156. [3] (1891) 141 U. S. 87.

to the assets of the deceased then or thereafter rightfully therein, and as to such assets he also will be in privity of estate with the deceased and will represent him and be his legal representative. From this it must be clear that while administrators of the same deceased in different jurisdictions are all in privity of estate with the deceased as to the assets in the jurisdictions in which they are severally appointed, they can never be in privity of estate with each other.

In general the assets in any one jurisdiction at the time of the death of a deceased are distinct, and remain distinct, from the assets in every other jurisdiction. But even if after the appointment of an administrator in one jurisdiction assets should come to him from elsewhere, his title to them will be derived from the deceased and not from the administrator transmitting them. Privity of estate, therefore, between different administrators of the same deceased in different jurisdictions is an impossibility.

But the same is equally true of successive administrators of the same deceased in the same jurisdiction. "An administrator *de bonis non administratris*," says Woerner,[1] "succeeds, as implied by the terms used to designate his office (administration of goods remaining unadministered) to the legal ownership of all effects of the deceased which have not already been administered by the sole executor or administrator, or all of several executors or administrators, who may have died, resigned, or been removed . . . The administrator *de bonis non* takes such property as the representative of the deceased, not as succeeding to the prior executor or administrator, and is, therefore, said to be not in privity, in this respect, with the former incumbent of the office."[2]

But while there is, and can be, no privity of estate between different administrators of the same deceased, we should not hastily conclude from this that the administration of an estate by one administrator can bind no other administrator of the same deceased, whether in or out of

[1] Woerner, The American Law of Administration, Vol. 2, sec. 351.

[2] Bell, Admr. *v.* Speight (Tenn. 1850) 11 Hump. 451, 453; United States *v.* Walker (1883) 109 U. S. 258, 261; Waterman *v.* Dockray (1886) 78 Me. 139, 141.

the same jurisdiction. That it can is well settled not only as between successive administrators of the same deceased in the same jurisdiction, but also as between different administrators of the same deceased in different jurisdictions.

A judgment against an administrator in chief binds his successor, the administrator *de bonis non*. In discussing the effect of a judgment obtained against an administratrix in Mississippi upon an administrator of the same deceased in Louisiana, Justice Grier, after remarking the absence of all privity of estate between them, says: "Nor does the one come by succession to the other into the trust of the same property, encumbered by the same debts, as in the case of an administrator *de bonis non*, who may truly be said to have official privity with his predecessor in the same trust and, therefore, liable to the same duties."[1] In support of his statement he cites Snape *v.* Norgate[2] and Dykes *v.* Woodhouse.[3]

In a suit against an administrator *de bonis non* upon a promise by the testator, it is a good defense that the Statute of Limitations has run in favor of the executor, the predecessor of the defendant.[4]

If an administrator permits the Statute of Limitations to run in favor of a debtor of the deceased, the defence is good as against an administrator *de bonis non* of the same deceased in the same jurisdiction.[5]

Payment by a debtor to an administrator in chief is a good defence to an action by an administrator *de bonis non* to recover the same debt.[6]

In an action by an administrator *de bonis non* to recover the value of property sold to defendant by the deceased in which the defence was payment to a former administrator, admissions of payment made by the former administrator are allowed against the administrator *de bonis non*.[7]

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[1](1848) 6 How. 44, 59, 60. [2](1630) Cro. Car. 167.

[3](Va. 1825) 3 Rand. 287.

[4]Heard *v.* Meader, Admr. (1821) 1 Me. 156.

[5]Wych *v.* East India Co. (1734) 3 P. Wms. 309.

[6]Allen, Admr. *v.* Dundas (1789) 3 T. R. 125; Ipswich Mfg. Co. *v.* Story, Exec. (1842) 5 Metc. 310; Tarbell *v.* Jewett (1880) 129 Mass. 457.

[7]Eckert, Admr. *v.* Triplett (1874) 48 Ind. 174; Lashlee, Admr. *v.* Jacobs (Tenn. 1849) 9 Hump. 718.

A new promise by an executor or administrator within six years takes the case out of the Statute of Limitations, as well in an action against an administrator *de bonis non* as against the original executor or administrator who made the promise.[1]

Under the title "Privity between Successive Administrators" Woerner says:[2]

"The question of privity between an administrator *de bonis non* and his predecessor, that is to say, the extent to which the one is bound by the antecedent acts of the other, must be determined by the scope and effect of those acts upon the course of the administration. It is well settled, both at common law and in all the States, that acts binding upon the original administrator as acts of administration, by which the right of a debtor, creditor, legatee or distributee against or in favor of the estate of a deceased is affected, are equally binding upon all successors. To this extent the privity between them is complete, because what an administrator does lawfully within the sphere of his powers is in law the same as if his testate or intestate had done it, and not to be questioned by any one representing him. This privity does not arise out of any relation between *them* to each other, but is the result of the relation of each of them to the testator or intestate, which, to the extent to which property left by him may come into their hands respectively, is the same in both."[3]

The privity here spoken of is not the privity, that is privity of estate, spoken of in the Ingersoll case. It is the "official privity," spoken of by Justice Grier in Stacy *v.* Thrasher.[4]

But if this kind of privity prevails as between successive administrators in the same jurisdiction, why should it not equally prevail as between different administrators of the same deceased in different jurisdictions? That it does is, we think, shown by the authorities.

A dies intestate and domiciled in Connecticut. He leaves personal property in Connecticut and Rhode Island. B is appointed his administrator in Connecticut, and C in Rhode Island. X, a debtor of A, residing in Rhode Island, pays his debt to C, the Rhode Island administrator. X then moves to Connecticut and is sued there by C, the Connecticut administrator, to recover the same debt. He

[1]Emerson *v.* Thompson et al. (1820) 16 Mass. 429.

[2]Woerner, The American Law of Administration, Vol. 2, Sec. 353.

[3]Cf. Am. & Eng. Ency. of Law (2d ed.) vol. 11, p. 1336.

[4](1848) 6 How. 44, 60.

pleads as a defence payment to C, the Rhode Island administrator. The defence is good.[1]

A debtor residing in Tennessee pays a debt due the deceased to the domiciliary administrator in Alabama. An administrator of the deceased thereafter appointed in Tennessee sues the debtor in Tennessee to recover the same debt. Payment to the domiciliary administrator is a good defence.[2]

A debtor residing in Tennessee pays a debt due the deceased to an ancillary administrator in Alabama. A domiciliary administrator thereafter appointed in Tennessee sues the debtor in Tennessee. The payment to the ancillary administrator is a good defence.[3]

A New York Insurance Company issues to A, who resides in New York, a policy of insurance payable to his estate. The insured subsequently dies in the State of Washington having the policy in his possession. An administrator is appointed in Washington and there sues the company to recover the amount of the policy. Subsequently an administrator is appointed in New York and sues the company in New York to recover the amount of the same policy. The company pleads as a defence the pendency of the action in Washington. It is held a good defence and that a second action upon the same policy by the New York administrator should not be allowed.[4]

A dies in New Jersey leaving all his personal property in New York City. He leaves, as his next of kin, a sister of the whole blood, and one brother and five sisters of the half blood, all residing in Connecticut. The brother of the half blood goes to New York, is there appointed administrator and renders an account of his administration to the Surrogate's Court in New York County. If A died domiciled in New York his next of kin would share equally; if in Connecticut his sister of the whole blood would be entitled to everything. The New York Surrogate's Court finds that C died domiciled in New York and directs dis-

[1] Slocum *v.* Sandford (1818) 2 Conn. 533. Cf. Stevens, Admr. *v.* Gaylord (1814) 11 Mass. *256.

[2] Wilkins *v.* Ellett, Admr. (1869) 9 Wall. 740. Cf. Schluter *v.* Bowery Savings Bank (1889) 117 N. Y. 125.

[3] Wilkins *v.* Ellett, Admr. (1883) 108 U. S. 256.

[4] Sulz *v.* Mutual Reserve Fund Life Ass'n (1895) 145 N. Y. 563.

tribution equally among all his next of kin and such distribution is made. Subsequently the husband of the sister of the whole blood obtains letters of administration in Connecticut and demands of the brother of the half blood, who was administrator in New York, the property of the deceased, and upon refusal brings an action of trover. The defendant sets up as a defence the proceedings in the New York Surrogate's Court. It is held that these proceedings are conclusive and bind the Connecticut administrator though he was not a party thereto.[1]

A dies in Louisiana, testate and domiciled in Mississippi, leaving personal property in Louisiana. His will is probated in Louisiana and his personal property in that State distributed by decree of the proper Probate Court of Louisiana to his widow. She takes the property to Mississippi. A's brother, B, then takes out letters of administration in Mississippi and sues A's widow to recover the personal property so removed by her from Louisiana to Mississippi. It is held that B cannot recover, that the decree of the Louisiana Court as to the assets which were in Louisiana at A's death is binding upon B, the Mississippi administrator, though he was not a party to the proceedings in Louisiana.[2]

A dies testate and domiciled in Vermont. He leaves property in Illinois and Vermont. His will is probated in Illinois, and letters testamentary issued in Illinois to B; the will is not probated in Vermont. A's widow, C, receives from B, the Illinois executor, a portion of the property in Illinois and takes it to Vermont. She also receives a portion of the property in Vermont. Subsequently D is appointed administrator of A's estate in Vermont and sues the administrator of C, who has died, to recover the property so received by C. It is held that D can recover so much of the property as the widow, C, received of the property in Vermont, but not so much as she received from B, the executor in Illinois.[3]

A dies testate and domiciled in Massachusetts. The will is probated in Massachusetts and letters testamentary

[1] Holcomb, Admr. *v.* Phelps (1844) 16 Conn. 127.

[2] Wells et al. *v.* Wells (1858) 35 Miss. 638.

[3] Walton, Admr. *v.* Estate of Electa Hall (1894) 66 Vt. 455.

issued to B. Among A's assets is a note and a mortgage upon real and personal property in Rhode Island to secure its payment. Subsequently the will is probated in Rhode Island and letters testamentary there issued to B. By leave of the Rhode Island Probate Court B sells the note and mortgage. He renders an account to the Probate Court in Rhode Island and credits himself with payment of several different bills and with loss on mortgage $750. The Rhode Island Probate Court allows the account. Subsequently B renders an account to the Probate Court in Massachusetts and credits himself with the payments made by him in Rhode Island. The Probate Court disallows some of these credit items, but the Supreme Court of Massachusetts reverses and holds that the Rhode Island decree allowing these items is binding in Massachusetts.[1]

A dies intestate and domiciled in California. B is appointed administrator of A's estate in California. He renders an account to the Probate Court in California, and the same is approved and the property distributed to C and D, sisters of A. Subsequently E brings suit against C and D in Massachusetts, alleging himself to be a brother of A and entitled to one-third of his estate, and that the decree of the Probate Court in California distributing the estate to C and D was obtained by fraud, and asks judgment that C and D pay him one-third of the assets received by each of them. It is held that the California decree is final as to the rights of the parties to the estate and the bill is dismissed.[2]

We might add to these authorities indefinitely, but this material is ample for our present purpose. We see that there is no "privity" in the sense of "privity of estate" between different administrators of the same deceased, whether in the same jurisdiction or in different jurisdictions. We also see that the lawful administration[3] of an estate by an administrator is binding upon every other administrator whether in the same jurisdiction or in other jurisdictions. This is what we should expect. Were it

[1] Clark *v.* Blackington (1872) 110 Mass. 369.

[2] Moony *v.* Hinds et al. (1894) 160 Mass. 469.

[3] As to the meaning of the term administration, see Martin *v.* Ellerbe's Admr. (1881) 70 Ala. 326, 339.

not so, no estate of a deceased person could ever be finally administered, and all that one administrator might do or suffer to be done in administering the assets coming to him might all be undone by a succeeding administrator in the same jurisdiction or by other administrators in other jurisdictions.

The grounds upon which this principle of administration may be rested are not far to seek. The administrator of a deceased has a two-fold relation, one to the deceased and one to the living.

He is called the " legal representative " of the deceased and as such continues the person of the deceased and in legal contemplation is the deceased.[1] What he does or omits to do in the lawful administration of so much of the estate of the deceased as comes to him is, in legal contemplation, done or omitted by the deceased and has the same legal effect as if done or omitted by the deceased.

If, therefore, one administrator or legal representative dies or is removed and another administrator or legal representative is appointed in his place, the new administrator or legal representative continues the same person which the deceased or removed administrator or legal representative continued. For legal purposes the deceased continued to live in the first administrator or legal representative and now continues to live in the new administrator or legal representative. All that is done in the way of administration of the assets in a particular jurisdiction is in legal contemplation always done by the same person, the deceased and, therefore, what the administrator, that is, the deceased, did yesterday must bind the administrator, that is, the deceased, to-day.

The fiction which identifies each administrator in the same jurisdiction with the deceased and so makes a unit of the administrations of successive administrators in the same jurisdiction, must equally serve to unify the administrations of different administrators in different jurisdictions. The identification of an administrator with the deceased is restricted to the assets that come to the control of the particular administrator. His representation of the deceased begins and ends with such assets. But a dead man may, in

[1] Holmes, Common Law, 344, 345.

legal contemplation, live at the same time in different jurisdictions and be embodied in many different persons. If a live man has a separate agent in each of several states, what any one agent does in any one state must bind every other agent in every other state. The principal is embodied in each agent and what each agent does he, in legal contemplation, does. So that what he does while embodied in one agent must equally bind him in all his other forms of embodiment. So if the same dead man is for legal purposes embodied in each of several administrators, what he does when embodied in one administrator must bind him in all his other forms of embodiment.

But an administrator is more than the representative of the deceased, and does more than continue the person of the deceased. He is under duty to those entitled to share in the estate left by the deceased to convert the same into money, from the fund accumulated to pay expenses of administration and the debts of the deceased, and to distribute what is left to the distributees. In what he does and in what he does not do, in his action and in his inaction, his commission and omission in respect to the assets coming to him, he represents the creditors and distributees. He is they and they are he as to third persons, and what binds him binds them as to third persons. He may violate his duty to them; if so, their remedy is against him and not against third persons. Indeed the relation between him and them is often described, with sufficient accuracy for present purposes, as that of trustee and cestui que trust. [1]

An administrator represents the creditors and distributees and, in the absence of fraud or collusion, what binds him binds them. Therefore, a judgment against him binds them.

In Morris et al. *v.* Murphey & Co.[2] it was held that a

[1] Yonley *v.* Lavender (1874) 21 Wall. 276, 280; Tate *v.* Norton (1876) 94 U. S. 746, 752; Meeks *v.* Olpherts (1879) 100 U. S. 564, 569; Cowen *v.* Adams (1897) 78 Fed. 536, 543, 544; Morris et al. *v.* Murphey & Co. (1894) 95 Ga. 307–310; Manley et al. *v.* Kidd, Admr. (1857) 33 Miss. 141, 148; German et al. *v.* Clark, Admr. (1874) 71 N. C. 417, 420, 421; Blood *v.* Kane (1892) 130 N. Y. 514, 517; Mauldin *v.* Gossett (1881) 15 S. C. 565, 578; Fraser & Dill *v.* City Council (1882) 19 S. C. 384, 388, 389.

[2] (1894) 95 Ga. 307.

judgment against an administrator was binding upon the creditors of the deceased. Atkinson, Justice, said:[1]

"The administrator is in law the personal representative of the deceased. He is, for all practical purposes involving the administration of his affairs, a legal substitute for the deceased. Clothed as a trustee with the duty of administering all the assets which may come into his hands, and applying the same under the Statute of Distribution, it is his duty to represent the estate in any litigation in which it may become involved, to prosecute suits in favor of and defend suits against the estate he represents. * * * The administrator with respect to such matters stands upon the same footing as the deceased. It will not be seriously insisted that a judgment rendered against a person in his lifetime, with due notice of the pendency of the action, fairly rendered, and to which no exception was by him taken, could thereafter be called into question by a creditor of such person. No more can it justly be said that his estate would not be equally bound where a judgment, under similar circumstances, has been rendered against his administrator."[2]

In Manley et al. *v.* Kidd, Admr.[3] it was held that a decree against the distributees of a deceased in an action to recover personal property of the deceased was a bar to a subsequent suit by an administrator of the deceased brought to recover the same property. The reverse is, of course, equally true.

Recurring to the question with which this paper opened, we should find its solution not difficult.

C, the administrator of A in Montana, continued the person of A and was, for legal purposes, A. The judgment, therefore, obtained by X against C, the Montana administrator, was in legal effect a judgment against A. D, the administrator of A in Massachusetts, continued the person of A and is, for legal purposes, A. In a suit by A in Massachusetts against X to recover the same debt which A sought to recover in the Montana suit, the Montana judgment should be a defence. The parties and the subject matter in the Massachusetts suit are, in legal contemplation, the same as were the parties and the subject matter in the Montana suit. All the requisities for the application of the doctrine of res adjudicata exist, and the defence should be good.

The same result follows if, instead of viewing the administrator as representing the dead, we regard him as repre-

[1] Id. 310.

[2] Pickens *v.* Yarborough (1857) 30 Ala. 408; Cunningham *v.* Ashley et al. (1873) 45 Cal. 485; German et al. *v.* Clark, Admr. (1874) 71 N. C. 417.

[3] (1857) 33 Miss. 141.

senting the living. C, the administrator of A in Montana, in suing X represented all the creditors and distributees of A. These creditors and distributees were the real plaintiffs in the Montana suit. The suit was brought for their benefit. The judgment obtained by X against C, the Montana administrator of A, was in reality a judgment against them and had the same effect against them as against their representative, C, the Montana administrator. D, the administrator of A in Massachusetts, in suing X also represents all the creditors and distributees of A. These creditors and distributees are the real plaintiffs in the Massachusetts suit. That suit is brought for their benefit. They are suing X to recover the same debt they sued to recover from him in the Montana suit. The parties and the subject matter in the Massachusetts suit are, in legal contemplation, the same as were the parties and the subject matter in the Montana suit. Again we conclude that all the requisites for the application of the doctrine of res adjudicata exist, and that the defence should be good.

If this solution of the question be not correct, and if the solution suggested by the court in the Ingersoll case be correct, see the consequences to which it logically leads.

If the judgment in the Montana suit in favor of X is not a defence to the Massachusetts suit, then a judgment in the Montana suit against X and in favor of the Montana administrator ought not to be a defence to the Massachusetts suit.

If this were the law, as the situs of a debt after the creditor's death is where the debtor is, it would be possible that a debtor might be sued in every State in the Union by an administrator of the same deceased creditor and a separate judgment for the same debt obtained against him in each State. It would also seem that as there is no "privity" between the different administrators, payment of one judgment to one administrator would not satisfy the other judgments, and the debtor might have to pay the same debt as many times as there were States.

Fortunately, however, this result is not now possible.[1]

[1] Biddle *v.* Wilkins (1828) 1 Pet. 686; Lewis *v.* Adams (1886) 70 Cal. 403; Barton *v.* Higgins (1874) 41 Md. 539; Talmage *v.* Chapel (1819) 16 Mass. 71; Rucks *v.* Taylor (1873) 49 Miss. 552; Hall et al. *v.* Harrison (1855) 21 Mo. 227; Tittman, Admr. *v.* Thornton et al. (1891) 107 Mo. 500.

The law is that a judgment by one administrator against a debtor of the deceased merges the debt. The debt is reduced to possession and the judgment becomes the individual property of the administrator who obtains it. He can sue the judgment debtor upon the judgment in a jurisdiction other than that in which the judgment was obtained, in his own name and not as administrator, and no other administrator of the deceased creditor can sue in any jurisdiction upon either the judgment or the original claim. In reducing the debt to the form of a judgment the administrator has administered that asset and no other administrator can again administer it. The same should be true when an administrator sues to collect an alleged debt and judgment on the merits is had against him. Such judgment should merge the alleged debt[1]. The debt should be considered as administered, and no other administrator should be allowed to administer that alleged asset again.

If the view of the court in the Ingersoll suit were the law, a person owing a deceased intestate a debt might have to defend upon the merits a suit to recover the same debt brought by an administrator in each State in the Union, and he might in the end have as many judgments in his favor as there are States. A doctrine that leads of necessity to such conclusions would impress the average mind as erroneous and one to be submitted to only upon compulsion of the clearest authorities. The writer has been unable to find either authority or principle in its support.

THADDEUS D. KENNESON.

NEW YORK.

[1] Sweet *v.* Brackley (1865) 53 Me. 346; Weeks *v.* Harriman (1888) 65 N. H. 91.